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SALUS POPULI SUPREMA LEX ESTO

*"The welfare of the people shall be the supreme law."*



ROBIN CARNAHAN  
SECRETARY OF STATE

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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the website at <http://www.sos.mo.gov/adrules/pubsched.asp>

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**RULES**—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 28, *Missouri Register*, page 27. The approved short form of citation is 28 MoReg 27.

The rules are codified in the *Code of State Regulations* in this system—

Title	Code of State Regulations	Division	Chapter	Rule
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation, i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division within the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

**RSMo**—The most recent version of the statute containing the section number and the date.

**R**ules appearing under this heading are filed under the authority granted by section 536.025, RSMo 2000. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons and findings which support its conclusion that there is an immediate danger to the public health, safety or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

**R**ules filed as emergency rules may be effective not less than ten (10) days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

**A**ll emergency rules must state the period during which they are in effect, and in no case can they be in effect more than one hundred eighty (180) calendar days or thirty (30) legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

## Title 2—DEPARTMENT OF AGRICULTURE Division 70—Plant Industries Chapter 11—Missouri Plant Law Quarantines

### EMERGENCY RULE

#### 2 CSR 70-11.040 Bakanae of Rice Exterior Quarantine

*PURPOSE: This rule prohibits the introduction of a serious disease pest of rice, known as Bakanae of rice or Foolish Seedling Disease, caused by the fungal organism, **Gibberella fujikuroi** (bakanae strains), into the state of Missouri, and establishes those articles and areas which are to be regulated. In the absence of a federal quarantine to prevent the movement and spread of this harmful disease of rice, it is necessary that the state entomologist take action to insure that infested rice seed and other regulated articles are not introduced into the state of Missouri.*

*EMERGENCY STATEMENT: This emergency rule provides immediate protection to the rice growing region of Missouri by prohibiting the introduction of a harmful plant disease not known to occur in the state of Missouri. This disease can be moved on infested rice seed and seed parts and is causing serious problems in the state of California, where it is widespread. Failure to enact this emergency rule could lead to the introduction of this harmful rice disease in Missouri, which, once introduced into a rice field cannot be eliminated, can spread to other fields causing reduced yields, create neg-*

*ative impacts on marketability of the rice crop and in extreme cases, crop failure. This emergency rule is needed to prohibit rice seed, originating in Bakanae infested areas, from moving into Missouri unless it has been tested and found free or has been treated with approved methods. The Plant Industries Division believes this emergency rule is essential for the protection of the multi-million dollar rice industry in Missouri. The scope of this emergency rule is limited to the circumstances creating the urgent situation and complies with the protections extended in the *Missouri* and *United States Constitutions*. The Plant Industries Division believes this emergency rule is fair to all interested persons and parties under the circumstances. A proposed rule, which covers this same material is published in this issue of the *Missouri Register*. This emergency rule was filed May 18, 2005 effective May 28, 2005, expires November 23, 2005.*

(1) It has been determined that a harmful disease pest of rice known as Bakanae (Foolish Seedling Disease), caused by the fungal organism *Gibberella fujikuroi* (bakanae strains), is not now known to be present in this state, is present in the state of California, designated as the infested area, and that its introduction into Missouri would result in serious loss and damage to the agriculture resources and to the general welfare of the state. Under the authority of section 263.130, RSMo of the Missouri Plant Law, the state entomologist does hereby establish a quarantine to prevent the of entry of rice seed from infested areas into the state of Missouri, and now sets forth the name of the pest against which the quarantine is established, the infested areas, the articles regulated, the rules governing movement of regulated articles, the rules governing issuance of permits, the rules governing suppression activities and the penalty.

(2) The following definitions shall apply to this quarantine:

(A) Certificate—a document issued or authorized by the Missouri Department of Agriculture, or regulatory official of the state of origin, indicating that a regulated article is not contaminated with *Gibberella fujikuroi* (bakanae strains), or has been treated in such a manner as to eliminate the organism. Such articles may be moved to any destination.

(B) Compliance agreement—a written agreement between the Missouri Department of Agriculture and any person engaged in growing, dealing in or moving regulated articles wherein the latter agrees to comply with conditions specified in the agreement to prevent the dissemination of *Gibberella fujikuroi* (bakanae strains).

(C) Exemptions—provisions contained in these regulations which allow for modifications in conditions of movement of regulated articles from regulated areas under specified conditions.

(D) Farm operator—a person responsible for the production of a rice crop on any individual farm.

(E) Infected—the presence of the causal organism on or in seed or any plant part that may or may not sustain and support the living and reproduction of the organism.

(F) Infested—actually infested with the organism or so exposed to infestation that it would be reasonable to believe that an infestation exists.

(G) Inoculum—spores or any other part of the causal organism that might serve to cause the organism to survive and reproduce on any plant or plant part that it comes into contact with.

(H) Inspector—any authorized employee of the Missouri Department of Agriculture, or any other person authorized by the Missouri Department of Agriculture to enforce the provisions of quarantine and its rules.

(I) Limited permit—a document issued or authorized by an inspector or a designated regulatory official to provide for the movement of regulated articles to restricted destination for limited handling, utilization or processing or for treatment.

(J) Mill operator—a person responsible for the operation of a manufacturing plant, and all facilities of that plant, involved in the processing, packaging or handling of rough rice and rice products.

(K) Milled rice—rice that has been subjected to processing to produce products from rough rice.

(L) Milling rice—rice that has been produced, handled, acquired and destined for processing through a mill.

(M) Person—any individual, corporation, company, society, association or other business entity.

(N) Regulated area—any state or any portion of such state that is known to be infested with *Gibberella fujikuroi* (bakanae strains).

(O) Research rice—any rice seed or rice plant parts that are to be used in a recognized research project conducted by a state or federal program under the supervision of a trained and credentialed professional staff that has in place proper safety programs to prevent the accidental release and/or spread of the disease.

(P) Rice mill—any manufacturing plant and all associated facilities that are involved in processing rough rice to produce rice related products.

(Q) Rice—all parts of rice and wild rice plants of the genera *Oryza*.

(R) Rice hulls—the outer covering of the rice seed that usually is removed in the milling process.

(S) Rice production area—any area utilized in the growing of rice plants for production of the plant and/or subsequent seed for harvesting in the state of Missouri.

(T) Rice products—any commodity or product that has been produced from any part of the rice plant and may contain parts of the original plant structure or they may be unrecognizable as having originated from the rice plant because of being subjected to additional processing.

(U) Rice mill waste—any trash or discarded material that was originally contained or in contact with rice plants, seed or other plant parts utilized in a milling process.

(V) Rough rice—rice seed harvested, handled and transported in the same form it was in immediately following harvest and removal from the rice plant.

(W) Seed assay—any test available to be applied to a sample, lot or other quantity of seed to determine the presence of *Gibberella fujikuroi* (bakanae strains).

(X) Seed rice—seed removed from the rice plant and subjected to such processing as to make the seed suitable for use as planting material for subsequent rice crops. This processing may include but is not limited to cleaning, treating and bagging. Depending on the handling and products applied to this seed it may or may not be suitable for human consumption.

(Y) Treatment—any process that may be applied to rice seed or other plant parts in an attempt to modify or affect the presence of *Gibberella fujikuroi* (bakanae strains).

(Z) Used rice equipment—any equipment previously used to harvest, strip, transport, destroy or process rice.

(3) The following is a list of articles, the movement of which is regulated:

(A) The causal agent, *Gibberella fujikuroi* (bakanae strains), in any living stage of development;

(B) Rice;

(C) Rough rice;

(D) Seed rice;

(E) Research rice;

(F) Milling rice;

(G) Rice hulls;

(H) Rice mill waste;

(I) Used rice equipment;

(J) Any other products, articles or means of conveyance, not covered by this section, when determined by an inspector they present a hazard of spread of *Gibberella fujikuroi* (bakanae strains) and the person in possession thereof has been so notified.

(4) The following subsections shall govern the movement of regulated articles. Requirements under other applicable state and federal quarantines must also be met:

(A) A certificate or limited permit is required to transport regulated articles from a regulated area into or through any rice production area.

(B) A certificate or limited permit for movement of regulated articles may be obtained from the Missouri Department of Agriculture or an authorized cooperator/collaborator agency.

(C) A certificate or limited permit may be issued by an inspector if a regulated article:

1. Has originated in the non-infested area of this state or in a non-infested area of any other state and has not been exposed to infestation at any time; or

2. Has been treated to eliminate infestation; or

3. Has been subjected to a seed assay to determine if the causal agent is present and none is found; or

4. Has been grown, manufactured, stored or handled in such a manner that in the judgment of the inspector no infestation will be transmitted thereby.

(D) Limited permits may be issued by an inspector to allow the movement of non-certified regulated articles for specified handling, utilization, processing or treatment in accordance with approved procedures, provided the inspector has determined that such movement will not result in the spread of *Gibberella fujikuroi* (bakanae strains).

(E) When certificates or limited permits are required, they shall be securely fastened to the regulated article or to the outside of the container in which the regulated article is being moved.

(F) Any certificate or limited permit which has been issued or authorized may be withdrawn by the inspector if they determine that the holder thereof has not complied with any conditions for the use of such documents or with any conditions contained in a compliance agreement.

(G) Persons requesting certification or a limited permit must request the services from an inspector(s) at least forty-eight (48) hours before the services are needed. The regulated articles must be assembled at the place and manner in which the inspector designates outside the rice production area. The following information must be provided at the time the request is submitted:

1. The quantity of the regulated article to be moved;

2. The location of the regulated article;

3. The names and addresses of the consignee and consignor;

4. The method of shipment; and

5. The scheduled date of shipment.

(5) Regulated articles may be moved for experimental or scientific purposes in accordance with specified conditions; provided, a permit is securely attached to the container of such articles or to the article itself.

(6) As a condition of issuance of certificates or permits for the movement of regulated articles, any person engaged in purchasing, assembling, exchanging, handling, processing, utilizing, treating or moving such articles may be required to sign a compliance agreement stipulating that s/he will maintain such safeguards against the establishment and spread of infestation and comply with such conditions as to the maintenance of identity, handling and subsequent movement of such articles, and the cleaning and treatment of means of conveyance and containers used in the transportation of such articles as may be required by the inspector.

(7) Regulated products transported in violation of this quarantine must be treated or destroyed or returned to the point of origin at the discretion of the state entomologist. Common carriers or other carriers, persons, firms or corporations, who shall transport or move regulated products in violation of this quarantine and these rules shall be subject to the penalties named in section 263.180, RSMo.

(8) Regulated areas include the state of California and any other rice production area where *Gibberella fujikuroi* (bakanae strains) and/or Bakanae (Foolish Seedling Disease) have been confirmed to occur.

*AUTHORITY:* sections 263.040, 263.050, 263.130 and 263.140, RSMo Supp. 2004. Emergency rule filed May 18, 2005 effective May 28, 2005, expires Nov. 23, 2005. A proposed rule covering this same material is published in this issue of the *Missouri Register*.

**Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 240—Public Service Commission  
Chapter 31—Missouri Universal Service Fund**

**EMERGENCY AMENDMENT**

**4 CSR 240-31.010 Definitions.** The commission is amending sections (4) and (9).

*PURPOSE:* This amendment is being proposed to incorporate additional eligibility requirements for low-income customers consistent with federal guidelines with an emergency rulemaking.

*EMERGENCY STATEMENT:* The General Assembly created and the Missouri Public Service Commission approved the establishment of a Missouri Universal Service Fund to help low income and disabled Missourians receive discounts for basic local telephone service. This emergency amendment is necessary to expand the eligibility criteria for low-income support and to maximize Federal Universal Service support for low-income customers. The Missouri Universal Service Fund is now commencing operations and expects to begin offering customer support on June 1, 2005. The Federal Communications Commission, (FCC) in expanding eligibility criteria, required state commissions to be consistent with federal rules by June 22, 2005. The amendment enhances the Fund's ability to assist low-income customers and disabled customers in obtaining affordable essential telecommunications services as directed by section 392.248.2(2), RSMo 2000. Certain telecommunications companies have expressed concerns that their federal Universal Service Fund support may be jeopardized if the Missouri Public Service Commission does not implement these rules by June 22, 2005. The FCC rules anticipate that some states will have their own rules. These states are known as non-default states and have the effect of preempting some of the federal rules relating to universal service funds. This commission has indicated that it desires to maintain its own rules rather than defaulting to the FCC guidelines. If the Missouri Public Service Commission does not promulgate these rules, Missouri runs the risk of defaulting to the federal rules; thus, potentially subjecting carriers to costly and burdensome requirements (such as income-based criteria) this commission chose not to incorporate. The Missouri Public Service Commission has used procedures best calculated to assure fairness to all interested persons and parties under the circumstances because it has discussed the emergency amendment with representatives of the telecommunications industry in Missouri. This emergency amendment follows procedures which comply with the protections extended by the *Missouri and United States Constitutions*. The scope of this emergency amendment is limited to the circumstances creating an emergency and requiring emergency action. This emergency amendment was filed May 31, 2005, effective June 10, 2005, expires February 15, 2006.

(4) Disabled customer—Any customer who requests or receives residential essential local telecommunications service and who meets the definition of disabled set out in section 660.100.2, RSMo 2000 or a customer who has a dependent that meets the definition of disabled set out in section 660.100.2, RSMo and is residing in the customer's household.

(9) Low-income customer—Any customer who requests or receives residential essential local telecommunications service and who *[has been certified by the Department of Social Services as economically disadvantaged by participation]* participates in Medicaid, food stamps, Supplementary Security Income (SSI), federal public housing assistance or Section 8, **National School Lunch Program's free lunch program, Temporary Assistance for Needy Families** or Low Income Home Energy Assistance Program (LIHEAP).

*AUTHORITY:* sections 392.200.2, 392.248 and 392.470.1, RSMo 2000. Original rule filed Aug. 15, 1997, effective April 30, 1998. Amended: Filed Oct. 30, 2002, effective July 30, 2003. Emergency amendment filed May 31, 2005, effective June 10, 2005, expires Feb. 15, 2006.

**Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 240—Public Service Commission  
Chapter 31—Missouri Universal Service Fund**

**EMERGENCY AMENDMENT**

**4 CSR 240-31.050 Eligibility for Funding—Low-Income Customers and Disabled Customers.** The commission is adding subsections (2)(C) and (D); amending subsection (3)(D); inserting new subsections (3)(E) and (F); and relettering subsequent subsections.

*PURPOSE:* This proposed amendment incorporates reporting requirements in subsection (2)(C) and eligibility requirements in subsection (3)(E) consistent with federal guidelines with an emergency rulemaking.

*EMERGENCY STATEMENT:* The General Assembly created and the Missouri Public Service Commission approved the establishment of a Missouri Universal Service Fund to help low income and disabled Missourians receive discounts for basic local telephone service. This emergency amendment is necessary to establish record retention requirements for documents used in determining the eligibility of customers qualifying for low-income or disabled support. The emergency amendment also allows customers sixty (60) days to show continued eligibility before losing low-income or disabled support. The Federal Communications Commission (FCC) has promulgated rules and required state commissions to become consistent with federal rules by June 22, 2005. Certain telecommunications companies have expressed concerns that their federal Universal Service Fund support may be jeopardized if the Missouri Public Service Commission does not implement these rules by June 22, 2005. The FCC rules anticipate that some states will have their own rules. These states are known as non-default states and have the effect of preempting some of the federal rules relating to universal service funds. This commission has indicated that it desires to maintain its own rules rather than defaulting to the FCC guidelines. If the Missouri Public Service Commission does not promulgate these rules, Missouri runs the risk of defaulting to the federal rules; thus, potentially subjecting carriers to costly and burdensome requirements (such as income-based criteria) this commission chose not to incorporate. The Missouri Public Service Commission has used procedures best calculated to assure fairness to all interested persons and parties under the circumstances because it has discussed the emergency amendment with representatives of the telecommunications industry in Missouri. This emergency amendment follows procedures which comply with the protections extended by the *Missouri and United States Constitutions*. The scope of this emergency amendment is limited to the circumstances creating an emergency and requiring emergency action. This emergency

amendment was filed May 31, 2005, effective June 10, 2005, expires February 15, 2006.

(2) Reporting Requirements.

(C) **The eligible telecommunications companies shall maintain records to document compliance with all requirements governing the low-income customer program for the three (3) full preceding calendar years and provide that documentation to the commission or Fund Administrator upon request.**

(D) **Reporting Requirements for Wholesale or Resold Services.**

1. **If a telecommunications company provides low-income customer or disabled customer discounted wholesale services to a reseller, it must obtain a certification from the reseller that it is complying with all commission requirements governing the low-income customer or disabled customer programs.**

2. **Noneligible telecommunications company resellers that purchase low-income customer or disabled customer discounted wholesale services to offer discounted services to low-income or disabled consumers must maintain records to document compliance with all commission requirements governing the low-income customer or disabled customer programs for the three (3) full preceding calendar years and provide that documentation to the commission or Fund Administrator upon request or until audited.**

(3) Individual Eligibility.

(D) Individuals who qualify for low-income or disabled support shall certify in writing on an application designed for that purpose that they are eligible for the programs. Such application shall require the applicant to certify under penalty of perjury that the individual receives benefits from one (1) of the qualifying programs and identify the program or programs from which that individual receives benefits. On the same document, a qualifying low-income or disabled individual also must agree to notify the carrier if that individual ceases to participate in the program or programs. **The application shall be used to certify individuals for both state and federal low-income support.** The companies shall rely upon this certification to provide the benefits under these programs until [the] individuals advise/s/ the company that they are no longer qualified or until the company is advised by the administrator that the individuals may not be eligible.

(E) **The telecommunications company shall, by December 31, 2005, establish procedures to verify a customer's continued eligibility for the low-income or disabled customer program. Verification procedures may include, but are not limited to, compliance with federal verification requirements, random beneficiary surveys, periodic submission of documentation showing participation in qualifying programs or periodic self-certification updates.**

(F) **The telecommunications company shall terminate an individual's enrollment in the low-income customer or disabled customer program if the customer ceases to meet eligibility requirements. Notification of impending termination shall be in the form of a letter separate from the individual's monthly bill. Individuals shall be allowed sixty (60) days following the date of the impending termination letter to demonstrate continued eligibility to the telecommunications company. The telecommunications company shall terminate discounted services supported by the low-income customer or disabled customer program to any customer who fails to demonstrate continued eligibility within the sixty (60)-day time period.**

*/(E)/(G)* Any eligible individual submitting an application within sixty (60) days of initiating service will be entitled to the applicable low-income or disabled discounts from the date of service initiation. If applicable, the company may provide either a refund or credit, as determined by the company. Any eligible individual submitting an

application after sixty (60) days of initiating service will begin receiving the appropriate discounts on a prospective basis.

*/(F)/(H)* The fund administrator shall be authorized by the board to conduct audits of individual self-certification using records that can be lawfully made available from the administrators of qualifying programs. If as a result of these audits, the administrator determines that a recipient may not be eligible for low-income or disabled support, the individual shall be required to verify eligibility for continuing to receive support pursuant to administrative procedures established by the fund administrator and approved by the board.

*AUTHORITY:* sections 392.200.2, 392.248 and 392.470.1, RSMo 2000. Original rule filed Aug. 15, 1997, effective April 30, 1998. Amended: Filed Oct. 30, 2002, effective July 30, 2003. Emergency amendment filed May 31, 2005, effective June 10, 2005, expires Feb. 15, 2006.

**Title 13—DEPARTMENT OF SOCIAL SERVICES  
Division 40—Family Support Division  
Chapter 2—Income Maintenance**

**EMERGENCY AMENDMENT**

**13 CSR 40-2.375 Medical Assistance for Families.** The division is amending section (1).

*PURPOSE:* This amendment modifies the income limit for the Medical Assistance for Families program after June 30, 2005.

*EMERGENCY STATEMENT:* Missouri's economic status requires emergency measures to contain cost wherever feasible. In order to meet SFY 2006 projected revenues, the 93rd General Assembly, in House Bill II, approved savings from core reductions and mandatory new decision items to the Medical Assistance for Families program, totaling \$110.2 million. Beginning July 1, 2005 Medicaid coverage for Medical Assistance for Families is modified so that the income limit is reduced from seventy-five percent (75%) of the federal poverty level to the July 16, 1996 Aid to Families with Dependent Children (AFDC) income standards. Promulgation of this emergency amendment is necessary to preserve the compelling governmental interest to achieve a balanced state budget for SFY 2006. A proposed amendment, which covers the same material, is published in this issue of the Missouri Register. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The division believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed May 20, 2005, effective July 1, 2005, expires December 27, 2005.

(1) The income limits for persons to be eligible for the Medical Assistance for Families program established pursuant to section 208.145, RSMo [is at or below seventy-five percent (75%) of the federal poverty level for the household size] are the **July 16, 1996 Aid to Families with Dependent Children (AFDC) income standards for the assistance group size.**

*AUTHORITY:* sections 207.020 and 208.145, RSMo 2000. Emergency rule filed June 7, 2002, effective July 1, 2002, expired Dec. 27, 2002. Original rule filed June 11, 2002, effective Dec. 30, 2002. Emergency amendment filed June 7, 2004, effective July 1, 2004, expired Dec. 27, 2004. Amended: Filed June 7, 2004, effective Jan. 30, 2005. Emergency amendment filed May 20, 2005, effective July 1, 2005, expires Dec. 27, 2005. A proposed amendment covering this same material is published in this issue of the Missouri Register.

**U**nder this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

**E**ntirely new rules are printed without any special symbolology under the heading of the proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

**A**n important function of the *Missouri Register* is to solicit and encourage public participation in the rulemaking process. The law provides that for every proposed rule, amendment or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

**I**f an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least thirty (30) days after publication of the notice in the *Missouri Register*. If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than thirty (30) days after publication of the notice in the *Missouri Register*.

**A**n agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the ninety (90)-day-count necessary for the filing of the order of rulemaking.

**I**f an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than thirty (30) days from the date of publication of the new notice.

Proposed Amendment Text Reminder:

**Boldface text indicates new matter.**

*[Bracketed text indicates matter being deleted.]*

**Title 1—OFFICE OF ADMINISTRATION  
Division 15—Administrative Hearing Commission  
Chapter 3—Procedure For All Contested  
Cases Under Statutory Jurisdiction**

**PROPOSED AMENDMENT**

**1 CSR 15-3.290 Filing of Documents; Fax Filing; Posting Bond.**  
The commission is amending subsection (2)(E).

*PURPOSE: The commission is amending subsection (2)(E) because the commission no longer requires the filing of a hard copy to follow fax filing in every case.*

- (2) A party filing by fax shall—  
(E) Certify in the documents/—

1. *The] the method of notice used to fulfill the requirements of subsection (2)(C) of this rule]; and*

2. *Compliance with the requirements of subsection (2)(D) of this rule]; and*

*AUTHORITY: sections 621.035, RSMo 2000 and 621.198, [and 621.205] RSMo [2000] Supp. 2004. Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. Amended: Filed Oct. 31, 1994, effective May 28, 1995. Amended: Filed Jan. 11, 2001, effective July 30, 2001. Amended: Filed June 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Administrative Hearing Commission, Karen A. Winn, Presiding Commissioner, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received no later than 5:00 p.m. on August 2, 2005. No public hearing is scheduled.*

**Title 1—OFFICE OF ADMINISTRATION  
Division 15—Administrative Hearing Commission  
Chapter 3—Procedure For All Contested  
Cases Under Statutory Jurisdiction**

**PROPOSED AMENDMENT**

**1 CSR 15-3.350 Complaints.** The commission is amending subsection (2)(D) and section (5).

*PURPOSE: The commission is amending subsection (2)(D) of this rule to maintain the filing fee authorized under section 621.053, RSMo Supp. 2004. The commission is amending section (5) to clarify that the service of an amended complaint is the same as service of any document other than the original complaint.*

(2) Specific Cases. In addition to the other requirements of this rule—

(D) In a case arising pursuant to Chapter 407, RSMo, including cases relating to the protest of an action taken by a motor vehicle, motorcycle or all-terrain vehicle manufacturer, distributor or representative pursuant to a franchise agreement, the petition shall include a filing fee equal to the filing fee of the circuit court of Cole County. The provisions of this subsection (2)(D) of this regulation shall expire on November 30, [2005] 2006.

(5) The provisions of this rule, except subsection (1)(D) and section (3), apply to amended complaints.

*AUTHORITY: sections 621.035, RSMo 2000 and 621.053 and 621.198, RSMo Supp. [2003] 2004. Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. For intervening history, please consult the Code of State Regulations. Amended: Filed June 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Administrative Hearing Commission, Karen A. Winn, Presiding Commissioner, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received no later than 5:00 p.m. on August 2, 2005. No public hearing is scheduled.

**Title 1—OFFICE OF ADMINISTRATION  
Division 15—Administrative Hearing Commission  
Chapter 3—Procedure For All Contested  
Cases Under Statutory Jurisdiction**

**PROPOSED AMENDMENT**

**1 CSR 15-3.380 Answers and Other Responsive Pleadings.** The commission is amending subsection (2)(E).

*PURPOSE:* The commission is amending subsection (2)(E) to facilitate the more fair and efficient development of the issues when an appeal of a state action is at issue.

(2) An answer to the complaint shall—

(E) When the petitioner seeks review of respondent's action, include—

1. Allegations of any [conduct] facts on which the respondent bases the action, with sufficient specificity to enable the petitioner to address such allegations;
2. Any provision of law that allows the respondent to base the action on such facts;
3. A copy of any written notice of the action of which petitioner seeks review, unless such written notice was included in the complaint; and
4. Facts that show that the respondent has complied with any provisions of law requiring the respondent to notify the petitioner of the action that petitioner is appealing.

*AUTHORITY:* sections 621.035, RSMo 2000 and 621.198, RSMo Supp. [2003] 2004. Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. For intervening history, please consult the Code of State Regulations. Amended: Filed June 1, 2005.

*PUBLIC COST:* This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

*PRIVATE COST:* This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Administrative Hearing Commission, Karen A. Winn, Presiding Commissioner, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received no later than 5:00 p.m. on August 2, 2005. No public hearing is scheduled.

**Title 1—OFFICE OF ADMINISTRATION  
Division 15—Administrative Hearing Commission  
Chapter 3—Procedure For All Contested  
Cases Under Statutory Jurisdiction**

**PROPOSED AMENDMENT**

**1 CSR 15-3.490 Hearings on Complaints; Default.** The commission is amending section (4).

*PURPOSE:* The commission is amending section (4) to facilitate the scheduling and re-scheduling of hearings.

(4) Expedited Hearings and Continuances. The commission may expedite or continue the hearing date upon notice to the parties except as otherwise provided by law. Any party may file a motion for an expedited hearing or a continuance. The motion shall:

(A) Be in writing;

(B) [s/State good cause./]; and

(C) State whether any party objects to the extension or that efforts to contact the parties have been futile.

*AUTHORITY:* sections 621.035, RSMo 2000 and 621.198, RSMo Supp. [2001] 2004. Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. Amended: Filed Oct. 31, 1994, effective May 28, 1995. Amended: Filed Jan. 11, 2001, effective July 30, 2001. Amended: Filed June 3, 2002, effective Nov. 30, 2002. Amended: Filed June 1, 2005.

*PUBLIC COST:* This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

*PRIVATE COST:* This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Administrative Hearing Commission, Karen A. Winn, Presiding Commissioner, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received no later than 5:00 p.m. on August 2, 2005. No public hearing is scheduled.

**Title 2—DEPARTMENT OF AGRICULTURE  
Division 70—Plant Industries  
Chapter 11—Missouri Plant Law Quarantines**

**PROPOSED RULE**

**2 CSR 70-11.040 Bakanae of Rice Exterior Quarantine**

*PURPOSE:* This rule prohibits the introduction of a serious disease pest of rice, known as Bakanae of rice or Foolish Seedling Disease, caused by the fungal organism, *Gibberella fujikuroi* (bakanae strains), into the state of Missouri, and establishes those articles and areas which are to be regulated. In the absence of a federal quarantine to prevent the movement and spread of this harmful disease of rice, it is necessary that the state entomologist take action to insure that infected rice seed and other regulated articles are not introduced into the state of Missouri.

(1) It has been determined that a harmful disease pest of rice known as Bakanae (Foolish Seedling Disease), caused by the fungal organism *Gibberella fujikuroi* (bakanae strains), is not now known to be present in this state, is present in the state of California, designated as the infested area, and that its introduction into Missouri would result in serious loss and damage to the agriculture resources and to the general welfare of the state. Under the authority of section 263.130, RSMo of the Missouri Plant Law, the state entomologist does hereby establish a quarantine to prevent the of entry of rice seed from infested areas into the state of Missouri, and now sets forth the name of the pest against which the quarantine is established, the infested areas, the articles regulated, the rules governing movement of regulated articles, the rules governing issuance of permits, the rules governing suppression activities and the penalty.

(2) The following definitions shall apply to this quarantine:

(A) Certificate—a document issued or authorized by the Missouri Department of Agriculture, or regulatory official of the state of origin, indicating that a regulated article is not contaminated with *Gibberella fujikuroi* (bakanae strains), or has been treated in such a manner as to eliminate the organism. Such articles may be moved to any destination.

(B) Compliance agreement—a written agreement between the Missouri Department of Agriculture and any person engaged in growing, dealing in or moving regulated articles wherein the latter agrees to comply with conditions specified in the agreement to prevent the dissemination of *Gibberella fujikuroi* (bakanae strains).

(C) Exemptions—provisions contained in these regulations which allow for modifications in conditions of movement of regulated articles from regulated areas under specified conditions.

(D) Farm operator—a person responsible for the production and/or sale of a rice crop on any individual farm.

(E) Infected—the presence of the causal organism on or in seed or any plant part that may or may not sustain and support the living and reproduction of the organism.

(F) Infested—actually infested with the organism or so exposed to infestation that it would be reasonable to believe that an infestation exists.

(G) Inoculum—spores or any other part of the causal organism that might serve to cause the organism to survive and reproduce on any plant or plant part that it comes into contact with.

(H) Inspector—any authorized employee of the Missouri Department of Agriculture, or any other person authorized by the Missouri Department of Agriculture to enforce the provisions of quarantine and its rules.

(I) Limited permit—a document issued or authorized by an inspector or a designated regulatory official to provide for the movement of regulated articles to restricted destination for limited handling, utilization or processing or for treatment.

(J) Mill operator—a person responsible for the operation of a manufacturing plant, and all facilities of that plant, involved in the processing, packaging or handling of rough rice and rice products.

(K) Milled rice—rice that has been subjected to processing to produce products from rough rice.

(L) Milling rice—rice that has been produced, handled, acquired and destined for processing through a mill.

(M) Person—any individual, corporation, company, society, association or other business entity.

(N) Regulated area—any state or any portion of such state that is known to be infested with *Gibberella fujikuroi* (bakanae strains).

(O) Research rice—any rice seed or rice plant parts that are to be used in a recognized research project conducted by a state or federal program under the supervision of a trained and credentialed professional staff that has in place proper safety programs to prevent the accidental release and/or spread of the disease.

(P) Rice mill—any manufacturing plant and all associated facilities that are involved in processing rough rice to produce rice related products.

(Q) Rice—all parts of rice and wild rice plants of the genera *Oryza*.

(R) Rice hulls—the outer covering of the rice seed that usually is removed in the milling process.

(S) Rice production area—any area utilized in the growing of rice plants for production of the plant and/or subsequent seed for harvesting in the state of Missouri.

(T) Rice products—any commodity or product that has been produced from any part of the rice plant and may contain parts of the original plant structure or they may be unrecognizable as having originated from the rice plant because of being subjected to additional processing.

(U) Rice mill waste—any trash or discarded material that was originally contained or in contact with rice plants, seed or other plant parts utilized in a milling process.

(V) Rough rice—rice seed harvested, handled and transported in the same form it was in immediately following harvest and removal from the rice plant.

(W) Seed assay—any test available to be applied to a sample, lot or other quantity of seed to determine the presence of *Gibberella fujikuroi* (bakanae strains).

(X) Seed rice—seed removed from the rice plant and subjected to such processing as to make the seed suitable for use as planting material for subsequent rice crops. This processing may include but is not limited to cleaning, treating and bagging. Depending on the handling and products applied to this seed it may or may not be suitable for human consumption.

(Y) Treatment—any process that may be applied to rice seed or other plant parts in an attempt to modify or affect the presence of *Gibberella fujikuroi* (bakanae strains).

(Z) Used rice equipment—any equipment previously used to harvest, strip, transport, destroy or process rice.

(3) The following is a list of articles, the movement of which is regulated:

(A) The causal agent, *Gibberella fujikuroi* (bakanae strains), in any living stage of development;

(B) Rice;

(C) Rough rice;

(D) Seed rice;

(E) Research rice;

(F) Milling rice;

(G) Rice hulls;

(H) Rice mill waste;

(I) Used rice equipment;

(J) Any other products, articles or means of conveyance, not covered by this section, when determined by an inspector they present a hazard of spread of *Gibberella fujikuroi* (bakanae strains) and the person in possession thereof has been so notified.

(4) The following subsections shall govern the movement of regulated articles. Requirements under other applicable state and federal quarantines must also be met:

(A) A certificate or limited permit is required to transport regulated articles from a regulated area into or through any rice production area.

(B) A certificate or limited permit for movement of regulated articles may be obtained from the Missouri Department of Agriculture or an authorized cooperator/collaborator agency.

(C) A certificate or limited permit may be issued by an inspector if a regulated article:

1. Has originated in the non-infested area of this state or in a non-infested area of any other state and has not been exposed to infestation at any time; or

2. Has been treated to eliminate infestation; or

3. Has been subjected to a seed assay to determine if the causal agent is present and none is found; or

4. Has been grown, manufactured, stored or handled in such a manner that in the judgment of the inspector no infestation will be transmitted thereby.

(D) Limited permits may be issued by an inspector to allow the movement of noncertified regulated articles for specified handling, utilization, processing or treatment in accordance with approved procedures, provided the inspector has determined that such movement will not result in the spread of *Gibberella fujikuroi* (bakanae strains).

(E) When certificates or limited permits are required, they shall be securely fastened to the regulated article or to the outside of the container in which the regulated article is being moved.

(F) Any certificate or limited permit which has been issued or authorized may be withdrawn by the inspector if they determine that the holder thereof has not complied with any conditions for the use of such documents or with any conditions contained in a compliance agreement.

(G) Persons requesting certification or a limited permit must request the services from an inspector(s) at least forty-eight (48) hours before the services are needed. The regulated articles must be assembled at the place and manner in which the inspector designates outside the rice production area. The following information must be provided at the time the request is submitted:

1. The quantity of the regulated article to be moved;
2. The location of the regulated article;
3. The names and addresses of the consignee and consignor;
4. The method of shipment; and
5. The scheduled date of shipment.

(5) Regulated articles may be moved for experimental or scientific purposes in accordance with specified conditions; provided, a permit is securely attached to the container of such articles or to the article itself.

(6) As a condition of issuance of certificates or permits for the movement of regulated articles, any person engaged in purchasing, assembling, exchanging, handling, processing, utilizing, treating or moving such articles may be required to sign a compliance agreement stipulating that s/he will maintain such safeguards against the establishment and spread of infestation and comply with such conditions as to the maintenance of identity, handling and subsequent movement of such articles, and the cleaning and treatment of means of conveyance and containers used in the transportation of such articles as may be required by the inspector.

(7) Regulated products transported in violation of this quarantine must be treated or destroyed or returned to the point of origin at the discretion of the state entomologist. Common carriers or other carriers, persons, firms or corporations, who shall transport or move regulated products in violation of this quarantine and these rules shall be subject to the penalties named in section 263.180, RSMo.

(8) Regulated areas include the state of California and any other rice production area where *Gibberella fujikuroi* (bakanae strains) and/or Bakanae (Foolish Seedling Disease) have been confirmed to occur.

*AUTHORITY:* sections 263.040, 263.050, 263.130 and 263.140, RSMo Supp. 2004. Emergency rule filed May 18, 2005, effective May 28, 2005, expires Nov. 23, 2005. Original rule filed June 6, 2005.

*PUBLIC COST:* This proposed rule will cost state agencies or political subdivisions less than five hundred dollars (\$500) in the aggregate.

*PRIVATE COST:* This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Agriculture, Plant Industries Division, Office of the State Entomologist, Michael E. Brown, PO Box 630, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days of publication of this notice in the *Missouri Register*. No public hearing is scheduled.

#### Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

##### Division 150—State Board of Registration for the Healing Arts

##### Chapter 7—Licensing of Physician Assistants

#### PROPOSED AMENDMENT

**4 CSR 150-7.135 Physician Assistant Supervision Agreements.** The board is proposing to add new language in subsection (1)(F).

*PURPOSE:* This amendment adds a definition of “actively engaged.”

(1) As used in this rule, unless specifically provided otherwise, the term—

**(F) Actively engaged**—as used in subsection (1)(A) of this rule shall mean a physician who, in addition to the patients being treated by the physician assistant, has an established practice of patients for whom they are responsible for their ongoing care.

*AUTHORITY:* section 334.735, RSMo [Supp. 1998] 2000. Original rule filed Jan. 3, 1997, effective July 30, 1997. Rule Action Notice filed:] July 7, 1998, effective July 21, 1999. Amended: Filed July 30, 1999, effective Feb. 29, 2000. Amended: Filed March 1, 2005. Amended: Filed June 1, 2005.

*PUBLIC COST:* The proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

*PRIVATE COST:* The proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri State Board of Healing Arts, Attn: Tina Steinman, Executive Director, 3605 Missouri Blvd., PO Box 4, Jefferson City, MO 65102 or healingarts@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

#### Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION

##### Division 100—Missouri Commission for the Deaf and Hard of Hearing

##### Chapter 200—Board for Certification of Interpreters

#### PROPOSED AMENDMENT

**5 CSR 100-200.060 Written Test.** The Missouri Commission for the Deaf and Hard of Hearing is amending section (8) of this rule.

*PURPOSE:* This amendment reduces the time that an applicant for certification is required to wait after failing the written test in the Missouri Interpreters Certification System before being allowed to take the written test again. The required wait time is reduced from six (6) months to three (3) months.

(8) Any applicant unable to obtain a passing score on the written test must refrain from retesting for a period of at least [six (6)] **three (3)** months from the date of their last written test. Any such applicant may reapply to take the written test by submitting a new application form along with the appropriate application fee.

*AUTHORITY:* sections 209.292(1), RSMo Supp. [2003] 2004 and 209.295(8), RSMo 2000. Original rule filed June 20, 1996, effective Jan. 30, 1997. Rescinded and readopted: Filed July 26, 2001, effective March 30, 2002. Amended: Filed Nov. 14, 2003, effective June 30, 2004. Amended: Filed May 27, 2005.

*PUBLIC COST:* This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

*PRIVATE COST:* This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Commission for the Deaf and Hard of Hearing, 1103 Rear Southwest Boulevard, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

[Title 8—DEPARTMENT OF LABOR AND  
INDUSTRIAL RELATIONS

Division 70—Missouri Assistive Technology Advisory  
Council  
Chapter 1—Assistive Technology Programs]

Title 1—OFFICE OF ADMINISTRATION  
Division 70—Missouri Assistive Technology Advisory  
Council  
Chapter 1—Assistive Technology Programs

PROPOSED AMENDMENT

[8 CSR 70-1.010] 1 CSR 70-1.010 **Telecommunications Access Program.** The council proposes to move this rule from Title 8 to Title 1 and amend paragraph (9)(D)1.

*PURPOSE:* This amendment is being proposed to move rules from the Department of Labor and Industrial Relations to the Office of Administration and to allow the council to provide adaptive telephone equipment on long-term loan to eligible Missourians with disabilities.

(9) TAP for Telephone Specific Procedures.

(D) Equipment Ownership, Repair and Replacement—

1. Adaptive telephone equipment purchased for an individual applicant [shall] may be owned by that applicant or may be provided on a long-term loan basis at the discretion of the program administrator based on determination of effectiveness.

2. Adaptive telephone equipment will be covered by the product warranty or by a one (1)-year express warranty provided via the Missouri Lemon Law for Assistive Devices.

3. The program administrator may provide a repair and replacement program.

4. Miscellaneous supplies, such as Text Telephone (TTY) paper are the applicant's responsibility.

5. An applicant shall be eligible for replacement equipment every four (4) years, unless their disability needs change. The program administrator may approve equipment replacement within this time period for extenuating circumstances.

6. If an applicant's disability changes, rendering the adaptive telephone equipment inappropriate to meet their needs, the applicant may reapply for new equipment and shall provide a description of the disability change.

*AUTHORITY:* section 209.253, RSMo 2000. Emergency rule filed July 28, 2000, effective Aug. 28, 2000, expired Feb. 23, 2001. Original rule filed July 28, 2000, effective Jan. 30, 2001. Emergency amendment filed Dec. 21, 2000, effective Dec. 31, 2000, expired June 28, 2001. Amended: Filed Dec. 21, 2000, effective June 30, 2001. Amended: Filed Aug. 7, 2001, effective Feb. 28, 2002. Amended: Filed Feb. 4, 2004, effective Aug. 30, 2004. Amended: Filed May 23, 2005.

*PUBLIC COST:* This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

*PRIVATE COST:* This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Assistive Technology Advisory Council, 4731 Cochise, Suite 114, Independence, MO 64055 or e-mail at matpmo@swbell.net. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

[Title 8—DEPARTMENT OF LABOR AND  
INDUSTRIAL RELATIONS

Division 70—Missouri Assistive Technology Advisory  
Council  
Chapter 1—Assistive Technology Programs]

Title 1—OFFICE OF ADMINISTRATION  
Division 70—Missouri Assistive Technology Advisory  
Council  
Chapter 1—Assistive Technology Programs

PROPOSED AMENDMENT

[8 CSR 70-1.020] 1 CSR 70-1.020 **Assistive Technology Loan Program.** The council proposes to move this rule from Title 8 to Title 1.

*PURPOSE:* This amendment is being proposed to move rules from the Department of Labor and Industrial Relations to the Office of Administration.

*AUTHORITY:* section 191.865, RSMo 2000. Original rule filed July 10, 2001, effective Jan. 30, 2002. Amended: Filed Feb. 4, 2004, effective Aug. 30, 2004. Amended: Filed May 23, 2005.

*PUBLIC COST:* This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

*PRIVATE COST:* This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Assistive Technology Advisory Council, 4731 Cochise, Suite 114, Independence, MO 64055 or e-mail at matpmo@swbell.net. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 13—DEPARTMENT OF SOCIAL SERVICES  
Division 40—Family Support Division  
Chapter 2—Income Maintenance

PROPOSED AMENDMENT

**13 CSR 40-2.375 Medical Assistance for Families.** The division is amending section (1).

*PURPOSE:* This amendment modifies the income limit for the Medical Assistance for Families program after June 30, 2005.

(1) The income limits for persons to be eligible for the Medical Assistance for Families program established pursuant to section 208.145, RSMo [is at or below seventy-five percent (75%) of the federal poverty level for the household size] are the **July 16, 1996 Aid to Families with Dependent Children (AFDC) income standards for the assistance group size.**

*AUTHORITY:* sections 207.020 and 208.145, RSMo 2000. Emergency rule filed June 7, 2002, effective July 1, 2002, expired Dec. 27, 2002. Original rule filed June 11, 2002, effective Dec. 30, 2002. Emergency amendment filed June 7, 2004, effective July 1, 2004, expired Dec. 27, 2004. Amended: Filed June 7, 2004, effective Jan. 30, 2005. Emergency amendment filed May 20, 2005, effective July 1, 2005, expires Dec. 27, 2005. Amended: Filed May 20, 2005.

*PUBLIC COST:* This proposed amendment will cost state agencies or political subdivisions thirty-nine thousand three hundred forty-six dollars and twenty cents (\$39,346.20) in the aggregate.

*PRIVATE COST:* This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, Family Support Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

**FISCAL NOTE  
PUBLIC COST**

**I. RULE NUMBER**

Rule Number and Name:	13 CSR 40-2.375
Type of Rulemaking:	Proposed Rule

**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Division of Family Services	\$39,346.20

**III. WORKSHEET**

65,577 cases times two mailings equals 131,154 total letters, times \$0.30 bulk postage per letter equals \$39,346.20 total postage cost.

**IV. ASSUMPTIONS**

Approximately 65,577 families will be sent two letters notifying the affected clients. The cost will be \$0.30 per letter. Administrative costs are matched by the federal government at 50%. Therefore half, or \$19,673.10, would be general revenue cost and the other half, \$19,673.10, would be federal Medicaid cost.

**Title 13—DEPARTMENT OF SOCIAL SERVICES**  
**Division 70—Division of Medical Services**  
**Chapter 3—Conditions of Provider Participation,**  
**Reimbursement and Procedure of General Applicability**

**PROPOSED RULE**

**13 CSR 70-3.170 Medicaid Managed Care Organization Reimbursement Allowance**

*PURPOSE: This rule establishes the formula for determining the Medicaid Managed Care Organizations' Reimbursement Allowance each Medicaid Managed Care Organization is required to pay for the privilege of engaging in the business of providing health benefit services in this state as required by Senate Bill 189, 93rd General Assembly.*

(1) Medicaid Managed Care Organization Reimbursement Allowance (MCORA) shall be assessed as described in this section.

(A) Definitions.

1. Medicaid Managed Care Organization (MCO). A health benefit plan, as defined in section 376.1350, RSMo, with a contract under 42 U.S.C. section 1396b(m) to provide health benefit services to Missouri MC+ managed care program eligibility groups.
2. Department. Department of Social Services.
3. Director. Director of the Department of Social Services.
4. Division. Division of Medical Services.
5. Health annual statement. The National Association of Insurance Commissioners (NAIC) annual financial statement filed with the Missouri Department of Insurance.
6. Total revenues. Total revenues reported for Title XIX—Medicaid on the NAIC annual statement schedule "Analysis of Operations by Lines of Business." Column No. 8, Line 7.
7. Engaging in the business of providing health benefit services. Accepting payment for health benefit services.

(B) Beginning July 1, 2005, each Medicaid MCO in this state shall, in addition to all other fees and taxes now required or paid, pay a Medicaid Managed Care Organization Reimbursement Allowance (MCORA) for the privilege of engaging in the business of providing health benefit services in this state.

1. The Medicaid MCORA owed for existing Medicaid MCOs shall be calculated by multiplying the Medicaid MCORA tax rate by the Total Revenues, as defined above. The most recent available NAIC Health Annual Statement shall be used. The Medicaid MCORA shall be divided by and collected over the number of months for which each Medicaid MCORA is effective. The Medicaid MCORA rates, effective dates, and applicable NAIC Health Annual Statements are set forth in section (2).

A. Exceptions.

(I) If an existing Medicaid MCO's applicable NAIC Health Annual Statement, as set forth in section (2), does not represent a full calendar year worth of revenue due to the Medicaid MCO entering the Medicaid market during the calendar year, the Total Revenues used to determine the Medicaid MCORA shall be the partial year Total Revenues reported on the NAIC Health Annual Statements schedule titled Analysis of Operations by Lines of Business annualized.

(II) If an existing Medicaid MCO did not have Total Revenues reported on the applicable NAIC Health Annual Statement due to the Medicaid MCO not entering the Medicaid market until after the calendar year, the Total Revenue used to determine the Medicaid MCORA shall be the MC+ regional weighted average per member per month net capitation rate in effect during the same calendar year multiplied by the Medicaid MCO's estimated annualized member months based on the most recent complete month.

(C) The Department of Social Services shall prepare a confirmation schedule of the information from each Medicaid MCO's NAIC

Health Annual Statement Analysis of Operations by Lines of Business and provide each Medicaid MCO with this schedule.

1. The schedule shall include:

- A. Medicaid MCO name;
- B. Medicaid MCO provider number;
- C. Calendar year from the NAIC Health Annual Statement;

and

D. Total Revenues reported on the Analysis of Operations by Lines of Business schedule.

2. Each Medicaid MCO required to pay the Medicaid MCORA shall review the information in the schedule referenced in paragraph (1)(C)1. of this regulation and if necessary, provide the department with correct information. If the information supplied by the department is incorrect, the Medicaid MCO, within fifteen (15) calendar days of receiving the confirmation schedule, must notify the division and explain the corrections. If the division does not receive corrected information within fifteen (15) calendar days, it will be assumed to be correct, unless the Medicaid MCO files a protest in accordance with subsection (1)(E) of this regulation.

(D) Payment of the Medicaid MCORA.

1. Offset. Each Medicaid MCO may request that their Medicaid MCORA be offset against any Missouri Medicaid payment due to that MCO. A statement authorizing the offset must be on file with the division before any offset may be made relative to the Medicaid MCORA by the MCO. Assessments shall be allocated and deducted over the applicable service period. Any balance due after the offset shall be remitted by the Medicaid MCO to the department. The remittance shall be made payable to the director of the Department of Revenue and deposited in the state treasury to the credit of the Medicaid MCORA Fund. If the remittance is not received before the next Medicaid payment cycle, the division shall offset the balance due from that check.

2. Check. If no offset has been authorized by the Medicaid MCO, the division will begin collecting the Medicaid MCORA on the first day of each month. The Medicaid MCORA shall be remitted by the Medicaid MCO to the department. The remittance shall be made payable to the director of the Department of Revenue and deposited in the state treasury to the credit of the Medicaid MCORA Fund.

3. Failure to pay the Medicaid MCORA. If a Medicaid MCO fails to pay its Medicaid MCORA within thirty (30) days of notice, the Medicaid MCORA shall be delinquent. For any delinquent Medicaid MCORA, the department may compel the payment of such reimbursement allowance in the circuit court having jurisdiction in the county where the main offices of the Medicaid MCO is located. In addition, the director of the Department of Social Services or the director's designee may cancel or refuse to issue, extend, or reinstate a Medicaid contract agreement to any Medicaid MCO that fails to pay such delinquent reimbursement allowance required unless under appeal. Furthermore, except as otherwise noted, failure to pay a delinquent reimbursement allowance imposed shall be grounds for denial, suspension, or revocation of a license granted by the Department of Insurance. The director of the Department of Insurance may deny, suspend, or revoke the license of the Medicaid MCO with a contract under 42 U.S.C. section 1396b(m) that fails to pay a MCO's delinquent reimbursement allowance unless under appeal.

(E) Each Medicaid MCO, upon receiving written notice of the final determination of its Medicaid MCORA, may file a protest with the director of the department setting forth the grounds on which the protest is based, within thirty (30) days from the date of receipt of written notice from the department. The director of the department shall reconsider the determination and, if the Medicaid MCO so requested, the director or the director's designee shall grant the Medicaid MCO a hearing to be held within forty-five (45) days after the protest is filed, unless extended by agreement between the Medicaid MCO and the director. The director shall issue a final decision within forty-five (45) days of the completion of the hearing.

After a final decision by the director, a Medicaid MCO's appeal of the director's final decision shall be to the Administrative Hearing Commission in accordance with sections 208.156, RSMo and 621.055, RSMo.

(2) Medicaid MCORA Rates for SFY 2006. The Medicaid MCORA rates for SFY 2006 determined by the division, as set forth in (1)(B) above, are as follows:

(A) The Medicaid MCORA will be five and ninety-nine hundredths percent (5.99%) of the total revenues reported by each Medicaid MCO on the calendar year 2004 NAIC Health Annual Statement Analysis of Operations by Lines of Business, and collected over twelve (12) months (July 2005 through June 2006). No Medicaid MCORA shall be collected by the Department of Social Services if the federal Center for Medicare and Medicaid Services (CMS) determines that such reimbursement allowance is not authorized under Title XIX of the Social Security Act. If CMS approval of the reimbursement allowance occurs after July 2005, the total Medicaid MCORA for SFY 2006 will be collected over the number of months remaining in the fiscal year.

*AUTHORITY: sections 208.201, RSMo 2000, and House Committee Substitute for Senate Bill 189 as enacted by the 93rd General Assembly, 2005. Original rule filed June 1, 2005.*

*PUBLIC COST: This proposed rule will cost state agencies or political subdivisions fifty thousand dollars (\$50,000) in the aggregate in state fiscal year 2006.*

*PRIVATE COST: This proposed rule will cost private entities 51.2 million dollars in state fiscal year 2006.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of the Director, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. If to be hand-delivered, comments must be brought to the Division of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

**FISCAL NOTE****PUBLIC COST****I. RULE NUMBER**

Rule Number and Name:	13 CSR 70-3.170
Type of Rulemaking:	Proposed Rule

**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services	\$50,000

**III. WORKSHEET**

Since the capitation rates must be increased to reflect the additional cost to the Medicaid MCOs and the capitation payments must be actuarially sound, additional administrative costs will be incurred by the Department to obtain this actuarial certification to satisfy federal managed care rules. The Department estimates an additional \$50,000 in actuarial cost for this certification.

**IV. ASSUMPTIONS**

Since the provider tax is a cost of doing business in the state, the administration portion of the Medicaid MCO capitation payment would increase to take into account the tax paid on a per member, per month basis. All amounts remitted shall be deposited in the Medicaid Managed Care Organization Reimbursement Allowance Fund for the sole purpose of providing payment to the Medicaid managed care organizations.

**FISCAL NOTE**

**PRIVATE COST**

**I. RULE NUMBER**

Rule Number and Name:	13 CSR 70-3.170
Type of Rulemaking:	Proposed Rule

**II. SUMMARY OF FISCAL IMPACT**

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the count of compliance with the rule by the affected entities:
7	Medicaid Managed Care Organizations doing business in the State of Missouri.	100%

**III. WORKSHEET**

Preliminary estimates based on 2004 Medicaid Total Revenues reported in the Missouri Department of Insurance reports indicates a total Medicaid Managed Care provider tax assessment of \$51.2 million based on a 5.99% tax assessment rate. The \$51.2 million would be collected by a monthly offset to the Medicaid managed care capitation payments made to each Medicaid managed care organization (MCO).

**IV. ASSUMPTIONS**

The proposed rule requires Medicaid managed care organizations to pay a reimbursement allowance for the privilege of engaging in the business of providing health benefit services in Missouri. All amounts remitted shall be deposited in the Medicaid Managed Care Organization Reimbursement Allowance Fund for the sole purpose of providing payment to the Medicaid managed care organizations.

The \$51.2 million would be collected by a monthly offset to the Medicaid managed care capitation payments made to each MCO.

**Title 13—DEPARTMENT OF SOCIAL SERVICES**  
**Division 70—Division of Medical Services**  
**Chapter 40—Optical Program**

**PROPOSED AMENDMENT**

**13 CSR 70-40.010 Optical Care Benefits and Limitations—Medicaid Program.** The Division of Medical Services is amending sections (1), (2), and (7).

*PURPOSE: This amendment updates the Department of Social Services, Division of Medical Services Internet address and revises the eye examination benefit to every two (2) years and eliminates coverage of eyeglasses for all recipients who are not eligible needy children, pregnant women or blind persons as approved through Senate Substitute for Senate Bill 539 enacted by the 93rd General Assembly.*

(1) Administration. The Optical Care program shall be administered by the **Department of Social Services**, Division of Medical Services, Department of Social Services. The optical care services covered and not covered, the program limitations and the maximum allowable fees for all covered services shall be determined by the Division of Medical Services and shall be made available through the Department of Social Services, Division of Medical Services website at [[www.dss.state.mo.us/dms](http://www.dss.state.mo.us/dms)] [www.dss.mo.gov/dms](http://www.dss.mo.gov/dms), provider bulletins, and updates to the provider manual. Services covered shall include only those which are clearly shown to be medically necessary.

(2) Persons Eligible. Any person who is eligible for Title XIX benefits from the **Family Support** Division [of Family Services] and who is found to be in need of optical care services as described in this regulation **subject to the limitations set forth in subsections (7)(A)–(Y)**.

(7) Program Limitations.

(A) One (1) comprehensive or one (1) limited eye examination is allowed per **two (2) years** (within a *twelve (12)-/twenty-four (24)-month period of time*) under the Medicaid program. **Eligible needy children, pregnant women, and blind persons are allowed one (1) comprehensive or one (1) limited eye examination per year (within a twelve (12)-month period of time) under the Medicaid program.** Payment for a comprehensive eye examination will be made only if six (6) or more of the following procedures have been performed:

1. Refraction far point and near point;
2. Case history;
3. Visual acuity testing;
4. External eye examination;
5. Pupillary reflexes;
6. Ophthalmoscopy;
7. Ocular motility testing;
8. Binocular coordination;
9. Vision fields;
10. Biomicroscopy (slit lamp);
11. Tonometry;
12. Color vision; and
13. Depth perception.

(C) **Eligible needy children, pregnant women, and blind persons may be allowed** [A]additional eye examinations [may be allowed] during the year (within a twelve (12)-month period of time) if medically necessary (that is, cataract examination, prescription change of 0.50 diopters or greater). A Medical Necessity Form must be [attached to the claim form] **completed** for eye examinations in excess of one (1) per year.

(D) Eyeglasses are **only** covered by Medicaid for **eligible needy children, pregnant women, and blind persons** when the prescription is at least 0.75 diopters for one (1) eye or 0.75 diopters for each

eye. **Eyeglasses (any type of frame and/or lens) are not covered for any other Medicaid eligibles.**

(E) Only one (1) pair of eyeglasses is allowed every two (2) years (within any twenty-four (24)-month period of time) for [all Medicaid recipients] **eligible needy children, pregnant women, and blind persons** regardless of age.

3. Frames—Prior authorization required.

*AUTHORITY: sections 208.152, 208.153 and 208.201, RSMo 2000, and Senate Substitute for Senate Bill 539 enacted by the 93rd General Assembly, 2005. This rule was previously filed as 13 CSR 40-81.170. Emergency rule filed April 10, 1981, effective April 20, 1981, expired July 10, 1981. Original rule filed April 10, 1981, effective July 11, 1981. Emergency amendment filed June 27, 2002, effective July 7, 2002, terminated Feb. 23, 2003. Amended: Filed July 15, 2002, effective Feb. 28, 2003. Amended: Filed March 3, 2003, effective Oct. 30, 2003. Amended: Filed June 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate over the life of the rule.*

*PRIVATE COST: This proposed amendment will cost private entities a range of zero (0) to \$7,754,000 annually, based on State Fiscal Year 2004 utilization, over the life of the rule.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of the Director, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. If to be hand-delivered, comments must be brought to the Division of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

**FISCAL NOTE**

**PRIVATE COST**

**I. RULE NUMBER**

Rule Number and Name:	13 CSR 70-40.010 Optical Care Benefits and Limitations-Medicaid Program
Type of Rulemaking:	Proposed Amendment

**II. SUMMARY OF FISCAL IMPACT**

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the count of compliance with the rule by the affected entities:
370,000	All Medicaid recipients, excluding eligible needy children, pregnant women, or blind persons	Services will be systematically denied and providers will not be reimbursed

Number impacted is net after adjusting for eligibles who no longer qualify for Medicaid coverage based on other Senate Bill 539 provisions.

**III. WORKSHEET**

The private cost of this proposed amendment is \$7,754,000 annually, based on the state fiscal year 2004 utilization of optical services, over the life of this rule. The amount is net of payments for services for children, pregnant women and blind and the savings of an eye examination from once per year to once every two years.

**IV. ASSUMPTIONS**

The proposed amendment revises the eye examination benefit to every two years and eliminates coverage of eyeglasses for all recipients who are not eligible needy children, pregnant women or blind persons as approved through Senate Substitute for Senate Bill 539 enacted by the 93<sup>rd</sup> General Assembly, 2005.

The state currently covers an eye examination once per year and eyeglasses every two years. The proposed amendment will eliminate coverage for eyeglasses and allow one eye examination every two years for adult Medicaid recipients who are not pregnant or blind.

The optical benefits for eligible needy children, pregnant women or blind persons will remain unchanged.

**Title 13—DEPARTMENT OF SOCIAL SERVICES**  
**Division 70—Division of Medical Services**  
**Chapter 90—Home Health Program**

**PROPOSED AMENDMENT**

**13 CSR 70-90.010 Home Health-Care Services.** The Division of Medical Services is amending sections (1), (2), and (4).

*PURPOSE:* This amendment eliminates coverage of physical, occupational and speech therapy for adult Medicaid recipients who are not pregnant or blind as approved through Senate Substitute for Senate Bill 539 enacted by the 93rd General Assembly, 2005.

(1) An otherwise eligible Medicaid recipient is eligible for Medicaid reimbursement on his/her behalf for home health services if all the conditions of subsections (1)(A)–(D) are met—

(A) The recipient requires—

1. Intermittent skilled nursing care which is reasonable and necessary for the treatment of an injury or illness; **or**

2. Physical, [or] occupational or speech therapy when the following conditions are met—

**A. The recipient is a needy child, pregnant woman or blind person; and**

**B. Physical, occupational or speech therapy** is reasonable and necessary for restoration to an optimal level of functioning following an injury or illness, in accordance with limitations set forth in section (8) of this rule; **or**

3. *Speech therapy reasonable and necessary for restoration to an optimal level of functioning following an injury or illness, in accordance with limitations set forth in section (8) of this rule.*

(2) To qualify as skilled nursing care or as physical, occupational or speech therapy under paragraph[s] (1)(A)1.[-] **or subparagraph (1)(A)2.B.** and to be reimbursable under the Medicaid Home Health Program, a service must meet the following criteria:

(C) The service must constitute active treatment for an illness or injury and be reasonable and necessary. To be considered reasonable and necessary, services must be consistent with the nature and severity of the individual's illness or injury, his/her particular medical needs and accepted standards of medical practice. Services directed solely to the prevention of illness or injury will neither meet the conditions of paragraph[s] (1)(A)1.[-] **or subparagraph (1)(A)2.B.** nor be reimbursed by the Medicaid Home Health Program.

(4) Services included in Medicaid home health coverage are those set forth in paragraph[s] (1)(A)1.[-] **or subparagraph (1)(A)2.B.** and, in addition, the intermittent services of a home health aide and the provision of nonroutine supplies identified as specific and necessary to the delivery of a recipient's nursing care and prescribed in the plan of care. These additional services are covered only if all the conditions of subsections (1)(A)–(D) are met. Necessary items of durable medical equipment prescribed by the physician **as a part of the home health service** are available to recipients of home health services through [the] Medicaid [Durable Medical Equipment Program] subject to the limitations of amount, duration and scope where applicable. **The home health agency must coordinate with the durable medical equipment provider to ensure the durable medical equipment provider has a copy of the home health plan of care for provision of the durable medical equipment prescribed.**

*AUTHORITY:* sections 208.153 and 208.201, RSMo 2000, and Senate Substitute for Senate Bill 539 enacted by the 93rd General Assembly, 2005. This rule was previously filed as 13 CSR 40-81.056. Original rule filed April 14, 1982, effective July 11, 1982.

*For intervening history, please consult the Code of State Regulations. Amended: Filed June 1, 2005.*

*PUBLIC COST:* This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

*PRIVATE COST:* This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. If to be hand-delivered, comments must be brought to the Division of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.

**Title 13—DEPARTMENT OF SOCIAL SERVICES**  
**Division 70—Division of Medical Services**  
**Chapter 97—Health Insurance Premium Payment (HIPP)**  
**Program**

**PROPOSED AMENDMENT**

**13 CSR 70-97.010 Health Insurance Premium Payment (HIPP) Program.** The division is amending sections (2) and (5).

*PURPOSE:* This amendment clarifies that as long as a health insurance premium is not used as a deduction to income when determining client participation in the Medicaid program, then spenddown coverage shall not exclude a Medicaid eligible individual from participating in the Health Insurance Premium Payment (HIPP) Program.

(2) Condition of Eligibility. An individual eligible for Medicaid, or a person acting on the recipient's behalf, shall cooperate in providing information necessary for the Division of Medical Services to establish [to establish] availability and cost-effectiveness of group health insurance by completing the Application for Health Insurance Premium Payment (HIPP) Program, Form MO886-3179(6-94), **included herein.** As a condition of Medicaid eligibility, persons who are not enrolled in an available group insurance plan which the division has determined is cost-effective, and who are otherwise eligible for Medicaid, shall apply for enrollment in the plan.

(5) Exceptions to Payment. Premiums shall not be paid for health insurance plans under any of the following circumstances:

(C) The premium is used to meet a spenddown obligation when all persons in the household are eligible or potentially eligible only under the spenddown program. When some of the household members are eligible for full Medicaid benefits, the premium shall be paid if it is determined to be cost-effective when considering only the persons receiving full Medicaid coverage. In those cases, the premium shall not be allowed as a deduction to meet the spenddown obligation for those persons in the household participating in the spenddown program. **As long as the health insurance premium is not used as a deduction to income when determining client participation in the Medicaid program, then spenddown coverage shall not exclude a Medicaid eligible individual from participating in the HIPP program;**

*AUTHORITY:* sections 208.153, [RSMo Supp. 1991] and 208.201, RSMo [Supp. 1987] 2000. Original rule filed June 30, 1994, effective Jan. 29, 1995. Amended: Filed June 1, 2005.

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. If to be hand-delivered, comments must be brought to the Division of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

**Title 13—DEPARTMENT OF SOCIAL SERVICES  
Division 70—Division of Medical Services  
Chapter 99—Comprehensive Day Rehabilitation**

**PROPOSED RULE**

**13 CSR 70-99.010 Comprehensive Day Rehabilitation Program**

*PURPOSE: This rule establishes the regulatory basis for the administration of the Comprehensive Day Rehabilitation Program. This rule provides for such methods and procedures relating to the utilization of, and the payment for, care and services available under the Medicaid program as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area. Specific details of provider participation, criteria and methodology for provider reimbursement, recipient eligibility, and amount, duration, and scope of services covered are included in the Comprehensive Day Rehabilitation Program manual, which is incorporated by reference in this rule and available at the website [www.dss.mo.gov/dms](http://www.dss.mo.gov/dms).*

*PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.*

(1) Administration. The Missouri Medicaid Comprehensive Day Rehabilitation Program shall be administered by the Department of Social Services, Division of Medical Services. The Comprehensive Day Rehabilitation services covered and not covered, the limitations under which services are covered, and the maximum allowable fees for all covered services shall be determined by the Division of Medical Services **and shall be included in the Medicaid provider manuals, which are incorporated by reference and made a part of this rule as published by the Department of Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65102, at its website [www.dss.mo.gov/dms](http://www.dss.mo.gov/dms), July 1, 2005. This rule does not incorporate any subsequent amendments or additions.** Comprehensive Day Rehabilitation Program shall include only those that are prior authorized by the Division of Medical Services.

(2) Persons Eligible. Prior authorized Comprehensive Day Rehabilitation services are covered for individuals with disabling impairments as the result of a traumatic head injury that are under the age of twenty-one (21), blind, or pregnant. The program provides intensive, comprehensive services designed to prevent or minimize chronic disabilities while restoring the individual to an optimal level of physical, cognitive, and behavioral function. Emphasis in the program is on functional living skills, adaptive strategies for cognition, memory or perceptual deficits, and appropriate interpersonal skills. The recipient must be eligible on the date the service is furnished. It is the provider's responsibility to determine the coverage benefits for a recipient based on their type of assistance as outlined in the Comprehensive Day Rehabilitation Program manual. The provider shall ascertain the patient's Medicaid/managed care status before any service is performed. The recipient's eligibility shall be verified in accordance with methodology outlined in the Comprehensive Day Rehabilitation Program manual.

(3) Provider Participation. To be eligible for participation in the Missouri Medicaid Comprehensive Day Rehabilitation Program, a provider must have the certificate of accreditation (CARE) from the Rehabilitation Accreditation Commission, employ and retain qualified/licensed head injury professionals qualified to render the services covered through the Comprehensive Day Rehabilitation Program, be a free standing rehabilitation center or in an acute hospital setting with space dedicated to head injury rehabilitation, and be an enrolled Medicaid provider.

(4) Prior Authorization. Comprehensive Day Rehabilitation services must be prior authorized by the Division of Medical Services in order for the provider to receive reimbursement. The request is reviewed by a medical consultant, and the provider is notified if the request is approved or, if not approved, the reason for denial. No more than six (6) months of services will be approved. It is possible to receive an additional six (6)-month authorization if the patient is showing progress toward treatment goals. The maximum period of Comprehensive Day Rehabilitation services covered is one (1) year.

(5) Covered Services. Comprehensive Day Rehabilitation Program services are covered for half-day (three (3) to four (4) hours) and full day (five (5) or more hours) units when the recipient meets the admission criteria and is prior authorized by the Division of Medical Services.

(6) Reimbursement. Payment will be made in accordance with the fee per unit of service as defined and determined by the Division of Medical Services. Providers must bill their usual and customary charge for Comprehensive Day Rehabilitation services. Reimbursement will not exceed the lesser of the maximum allowed amount determined by the Division of Medical Services or the provider's billed charges. Comprehensive Day Rehabilitation Program services are only payable to the enrolled, eligible, participating provider. The Medicaid program cannot reimburse for services performed by non-enrolled providers.

(7) Documentation Requirements for Comprehensive Day Rehabilitation Program.

(A) The following must be maintained in the recipient's clinical record:

1. Presenting complaint/request for assistance;
2. Relevant treatment history and background information;
3. Reported physical/medical/cognitive/psychological complaints;
4. Pertinent functional weaknesses and strengths;
5. Findings from formal assessments;
6. Plan of care;
7. Interview and behavioral observations;
8. Diagnostic formulation;

9. Recommendations for further evaluation and/or treatment needs; and

10. Dates of periodic review of the plan of care.

(8) Records Retention. These records must be retained for five (5) years from the date of service. Fiscal and medical records coincide with and fully document services billed to the Medicaid agency. Providers must furnish or make the records available for inspection or audit by the Department of Social Services or its representative upon request. Failure to furnish, reveal, or retain adequate documentation for services billed to the Medicaid program, as specified above, is a violation of this regulation.

*AUTHORITY: sections 208.152, 208.153, 208.164, 208.201, 208.471, 208.631, and 208.633, RSMo 2000, and Senate Substitute for Senate Bill 539 enacted by the 93rd General Assembly, 2005. Original rule filed June 1, 2005.*

*PUBLIC COST: This proposed rule will cost state agencies or political subdivisions seventy-eight thousand dollars (\$78,000) annually over the life of the rule.*

*PRIVATE COST: This proposed rule will cost private entities a range of zero (0) to one (1) million dollars annually based on state fiscal year 2004 utilization over the life of the rule.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of the Director, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. If to be hand-delivered, comments must be brought to the Division of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

**FISCAL NOTE**

**PUBLIC COST**

**I. RULE NUMBER**

Rule Number and Name:	13 CSR 70-99.010 Comprehensive Day Rehabilitation Program
Type of Rulemaking:	Proposed Rule

**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services Division of Medical Services	\$78,000

**III. WORKSHEET**

The public cost of this proposed rule is \$78,000 annually, based on the state fiscal year 2004 utilization of comprehensive day rehabilitation services by children, pregnant women and blind Medicaid recipients, over the life of this rule.

**IV. ASSUMPTIONS**

The proposed rule eliminates coverage of comprehensive day rehabilitation services for all adult Medicaid recipients excluding pregnant women or blind persons as approved through Senate Substitute for Senate Bill 539 enacted by the 93<sup>rd</sup> General Assembly, 2005.

**FISCAL NOTE****PRIVATE COST****I. RULE NUMBER**

Rule Number and Name:	13 CSR 70-99.010 Comprehensive Day Rehabilitation Program
Type of Rulemaking:	Proposed Rule

**II. SUMMARY OF FISCAL IMPACT**

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the count of compliance with the rule by the affected entities:
24	All Adult Medicaid recipients, excluding pregnant women or blind persons	Services will be systematically denied and providers will not be reimbursed

**III. WORKSHEET**

The private cost of this proposed rule is \$1,000,000 annually, based on the state fiscal year 2004 utilization of comprehensive day rehabilitation services, over the life of this rule. The amount is net of payments for services for children, pregnant women and blind Medicaid recipients.

**IV. ASSUMPTIONS**

The proposed rule eliminates coverage of comprehensive day rehabilitation services for all adult Medicaid recipients excluding pregnant women or blind persons as approved through Senate Substitute for Senate Bill 539 enacted by the 93<sup>rd</sup> General Assembly, 2005.